

AD-A141 325

LABOR NEEDS TO ADJUST COMPENSATION BENEFITS IT PAYS
INJURED FEDERAL EMPLO. (U) GENERAL ACCOUNTING OFFICE
WASHINGTON DC HUMAN RESOURCES DIV 26 MAR 84

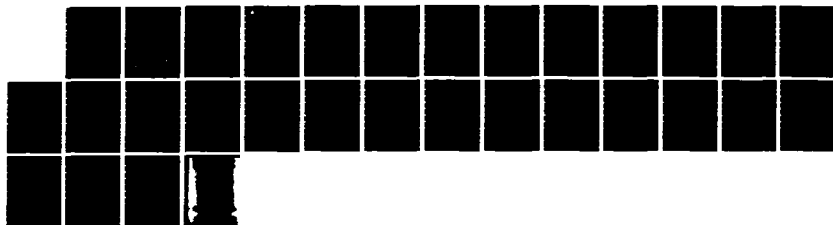
1/1

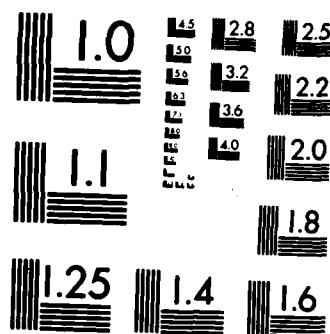
UNCLASSIFIED

GAO/HRD-84-29

F/G 5/11

NL





BY THE U.S. GENERAL ACCOUNTING OFFICE

Report To The Secretary Of Labor

Labor Needs To Adjust Compensation Benefits It Pays Injured Federal Employees To Levels Appropriate To Their Disabilities

The Department of Labor could have reduced federal workers' compensation costs by establishing "wage earning capacities" for partially disabled federal employees. From reviewing a sample of injured employees' claims at five district offices, GAO estimated that about one-third of the employees for whom Labor was paying benefits for total disability were partially disabled based on the medical evidence in their files.

GAO recognizes that in addition to a finding of partial disability, Labor must consider other factors--such as suitability and availability of employment--before it can establish an employee's wage earning capacity and these other factors would likely preclude Labor from reducing some employees' benefits. However, if Labor had been able to establish an earning capacity for all these partially disabled employees, GAO estimates that annual workers' compensation costs could have been reduced by as much as \$12.5 million.

In addition, some employees had actual earnings at least 12 percent above their established wage earning capacity. Increased earnings indicate that conditions may exist for further reducing an employee's benefits.

In early 1984, Labor was taking actions which, if effectively implemented, should resolve many of the problems discussed in this report.



This document has been approved for public release and sale; its distribution is unlimited.

DTIC
ELECTED
S MAY 22 1984
A

GAO/HRD-84-29
MARCH 26, 1984

Request for copies of GAO reports should be sent to:

**U.S. General Accounting Office
Document Handling and Information
Services Facility)
P.O. Box 6015
Gaithersburg, Md. 20760**

Telephone (202) 275-6241

The first five copies of individual reports are free of charge. Additional copies of bound audit reports are \$3.25 each. Additional copies of unbound report (i.e., letter reports) and most other publications are \$1.00 each. There will be a 25% discount on all orders for 100 or more copies mailed to a single address. Sales orders must be prepaid on a cash, check, or money order basis. Check should be made out to the "Superintendent of Documents".



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

HUMAN RESOURCES
DIVISION

B-214438

The Honorable Raymond J. Donovan
The Secretary of Labor

Dear Secretary Donovan:

We have reviewed the Office of Workers' Compensation Programs' (OWCP's) efforts to establish wage earning capacities under section 8115 of the Federal Employees' Compensation Act. The act requires Labor to pay partially disabled federal employees who have job-related injuries reduced compensation benefits based on their wage earning capacity. These earning capacity determinations and subsequent reductions in compensation are based on differences between employees' preinjury pay and either their capacity to earn or their actual earnings.

For 5 of OWCP's 16 district offices (Boston, Cleveland, Dallas, San Francisco, and Seattle) where we sampled injured federal employees' claims, we estimated that over 2,000 beneficiaries were receiving benefits for total disability even though their files contained medical evidence of partial disability. Because such evidence is not the sole factor to be considered in establishing an employee's wage earning capacity, OWCP would likely be precluded from reducing some of these employees' benefits. However, if OWCP had been able to establish a wage earning capacity in each case where evidence of partial disability existed, we estimated that annual federal compensation costs could have been reduced by as much as \$12.5 million.

We also reviewed cases for which OWCP had previously determined an employee's wage earning capacity and found that compensation benefits were often not adjusted to reflect increased earnings. Problems in setting wage earning capacities for partially disabled employees have been longstanding ones that have been discussed in previous reports by us, the Office of Inspector General, and the OWCP Task Force. (See app. I, p. 5.)



Availability Codes	Avail and/or Special
Dist:	A1

In December 1983, after we discussed our tentative findings and recommendations with Employment Standards Administration officials, OWCP's Division of Federal Employees' Compensation prepared instructions for its claims examiners, medical, and vocational rehabilitation staff that would result in a special effort to identify claimants on the long-term rolls whose benefits should be adjusted. These instructions also clarify the circumstances for further adjusting wage earning capacities when an employee's earnings are greater than initially envisioned.

MANY PARTIALLY DISABLED EMPLOYEES
DID NOT HAVE ESTABLISHED WAGE
EARNING CAPACITIES

Under the Federal Employees' Compensation Act (5 U.S.C. 8101 et seq.), Labor is required to establish a partially disabled employee's wage earning capacity when the employee, who cannot return to the job held at the time of injury, either returns to work earning less than before his or her injury or regains the capability to do some work. Within Labor, OWCP claims examiners are responsible for determining injured employees' eligibility, authorizing benefits, monitoring their recovery, and adjusting benefits when employees recover. OWCP's statistics showed that about half of the 36,000 recipients on the long-term rolls at the end of fiscal year 1982 did not have established wage earning capacities.

To determine how many of these recipients should have had wage earning capacities established, we sampled 139 of 6,391 claims for which wage earning capacities had not been established in five offices that OWCP officials agreed would be representative of their operations. (Details of our scope, objectives, and methodology are discussed in app. I.)

Based on the medical evidence in files we sampled, we estimated that about one-third of the beneficiaries under age 65 were not totally disabled. We recognize that a finding of partial disability is not the sole basis for reducing an employee's compensation benefits and that other factors specified in section 8115 of the act must be considered in establishing an employee's earning capacity. These other factors would likely preclude establishing a wage earning capacity for some partially disabled employees. However, if OWCP had been able to establish a wage earning capacity for all partially disabled employees, we estimated that annual compensation costs could have been reduced by as much as \$12.5 million (or about \$26 million nationwide if, as OWCP officials believe, the five district offices are

representative). (Additional information on our sample estimates and compensation cost reductions is contained in app. II.)

OWCP officials gave several reasons why earning capacities were not always established. First, claims examiners have many responsibilities, and wage earning capacity determinations are not a high priority. Second, establishing an employee's earning capacity is a slow, burdensome process. (Details on this process are provided in app. III.) Third, these determinations are often appealed, creating more work for examiners. Finally, the task is one that a claims examiner can defer with little likelihood of criticism from the claimant. Taken together, these factors tend to give examiners little motivation to establish wage earning capacities.

EARNING CAPACITIES ARE SELDOM ADJUSTED TO REFLECT ACTUAL EARNINGS

Claims examiners have been reluctant to revise earning capacity determinations when employees' earnings exceeded the earnings upon which their earning capacity was initially established. Based on our sample of cases in which earning capacities were established, we estimated that 15 percent of 2,260 beneficiaries had earnings at least 12 percent above their established capacity. If employees' compensation benefits had been adjusted to reflect their earnings, we estimated that about \$1.5 million could have been saved in fiscal year 1982 in the five district offices reviewed, or about \$4.4 million nationwide, assuming these districts are representative.

According to OWCP district office officials, claims examiners were not adjusting wage earning capacity determinations because they believed that the Employees' Compensation Appeals Board would not uphold such adjustments. The Board's position is that at least one of the following conditions needs to occur before an earning capacity adjustment could take place: (1) the medical condition has to improve, (2) the employee has to be retrained or otherwise vocationally rehabilitated, or (3) the original earning capacity determination has to be deemed erroneous. OWCP headquarters officials told us that when an individual is earning more than was reflected in the original earning capacity, compensation should be adjusted, and this adjustment can be made on the basis of either the second or third of these conditions. Apparently some confusion existed within OWCP about what specific conditions justified further adjustments to an employee's earning capacity.

NEW CASE MANAGEMENT SYSTEM SHOULD
REDUCE PROBLEMS IN THE FUTURE

In fiscal year 1984, OWCP implemented a new case management system that provides for better monitoring of compensation cases with increased emphasis on getting disabled employees back to work with the agency for whom the employee worked at the time of injury or with another employer. This monitoring should eventually result in either terminating partially disabled employees' compensation benefits or reducing them through the establishment of wage earning capacities.

This new system, if properly implemented, should improve the basis for either terminating employees' compensation benefits or initiating the wage earning capacity process and then adjusting employees' compensation benefits. This system is designed to overcome problems related to poor case management practices in the period shortly after the injury by requiring the development of more complete and accurate medical evidence related to employees' disabilities and by providing greater assistance in returning injured workers to gainful employment consistent with their physical restrictions and abilities.

Our sample results indicated that there was a large backlog of cases for which OWCP should have prepared earning capacity determinations. Therefore, the new case management system by itself may not be sufficient to address the problems of establishing these determinations for partially disabled employees who have been receiving temporary total disability benefits for long periods. These employees--many of whom have probably been out of the workforce for years--may require more intensive rehabilitation and job placement services than recently injured employees.

In our opinion, it may be difficult to reduce the backlog of cases needing wage earning capacity determinations in a timely manner with existing resources. Because of this, we suggested to Employment Standards Administration officials that OWCP establish a task force consisting of rehabilitation and other specialists to identify partially disabled employees and, where appropriate, establish their wage earning capacities.

Labor has effectively used such an approach in the past when it responded to a growing backlog of hearing loss cases by establishing a Hearing Loss Task Force to process these claims. This task force was established as a temporary unit initially staffed by employees appointed for periods ranging from 3 months to 2 years. Later OWCP contracted with "outside" specialists to help reduce the backlog of claims needing adjudication.

PROGRAM OFFICIALS' COMMENTS
AND OUR EVALUATION

We discussed our tentative findings and recommendations with Employment Standards Administration officials in November 1983. They agreed that in many cases OWCP should have acted to develop or adjust an employee's wage earning capacity. However, they had some reservations regarding our proposal to establish a task force to address these problems. They believed that the wage earning capacity process established under the Federal Employees' Compensation Act was unique and that OWCP's current staff was in the best position to make the judgments and decisions involved in establishing an employee's earning capacity. After our discussions, OWCP's Division of Federal Employees' Compensation drafted instructions for closer scrutiny of periodic roll cases where the potential for reducing or terminating compensation benefits is likely to exist.

According to these instructions (which were issued on Feb. 27, 1984), these long-term roll cases will be reviewed in order to determine if compensation is being paid at a rate that properly reflects the compensable disability and to adjust benefit levels when appropriate. Cases designated for review will be handled within the new case management system. These instructions also clarify the circumstances for adjusting beneficiaries' wage earning capacities when reported earnings are greater than those envisioned when the earning capacity was initially established.

District offices will be charged with completing their reviews of these cases by December 31, 1984, and the division will be checking on the progress and results of this effort. District office officials are to report any failure to conduct these reviews at a rate appropriate to meet that deadline.

OWCP's plan to adjust compensation benefits is a major step in the right direction. However, the instructions state that if many of these cases need to be referred to vocational rehabilitation specialists, other referrals resulting from implementation of the new case management system will of necessity take priority. Should the number of periodic roll cases needing action increase beyond the specialists' capabilities, we believe that OWCP should consider establishing a task force similar to the one used to clear the backlog of hearing loss cases that developed in the 1970s.

RECOMMENDATIONS

Because the problems noted in this report have been longstanding, we recommend that you direct OWCP to ensure that it implements the plans for reviewing long-term roll cases for purposes of terminating or adjusting, where appropriate, partially disabled employees' compensation benefits. If this effort is less successful than anticipated, we recommend that you consider establishing a task force to (1) identify from the backlog of periodic roll cases beneficiaries who are no longer totally disabled; (2) collect the information needed to establish their wage earning capacities; and (3) where appropriate, adjust their compensation benefits.

- - - -

As you know, 31 U.S.C. 720 requires the head of a federal agency to submit a written statement on actions taken on our recommendations to the House Committee on Government Operations and the Senate Committee on Governmental Affairs not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

We are sending copies of this report to interested congressional committees and the Director, Office of Management and Budget. Copies are also being sent to other interested parties and will be furnished to others upon request.

Sincerely yours,

Edward A. Blumore

for

Richard L. Fogel
Director

C o n t e n t s

	<u>Page</u>
APPENDIX	
I LABOR NEEDS TO ADJUST COMPENSATION BENEFITS IT PAYS INJURED FEDERAL EMPLOYEES TO LEVELS APPROPRIATE TO THEIR DISABILITIES	1
FECA provides for reducing or terminating	
partially disabled employees' compensation	1
Compensation rolls and amounts paid in 1982	3
Objectives, scope, and methodology	3
OWCP has not established earning capacities	
for many partially disabled employees	6
Why wage earning capacities were not	
established	7
Need to readjust compensation when earnings	
exceed established capacity	10
Reduced compensation costs should result	
from actions to identify claimants whose	
benefits need adjusting	12
Conclusions	15
Recommendations to the Secretary of Labor	15
II INFORMATION ON OUR SAMPLES WITH ESTIMATES AND RELATED SAMPLING ERRORS	16
III STEPS INVOLVED IN ESTABLISHING A WAGE EARNING CAPACITY	18

ABBREVIATIONS

FECA	Federal Employees' Compensation Act
GAO	General Accounting Office
OWCP	Office of Workers' Compensation Programs

LABOR NEEDS TO ADJUST COMPENSATION
BENEFITS IT PAYS INJURED FEDERAL EMPLOYEES
TO LEVELS APPROPRIATE TO THEIR DISABILITIES

Under the Federal Employees' Compensation Act (FECA), federal workers who suffer job-related injuries or diseases are entitled to workers' compensation benefits for lost wages resulting from such injuries or diseases. If these employees return to work or recover to the extent that they can work in some capacity, but not in the position they held at the time of injury, the Department of Labor should terminate or reduce their compensation benefits based on wages actually earned or on their ability to work and earn wages.

We reviewed Labor's efforts to make wage earning capacity determinations to reduce these benefits when the medical evidence indicated that disabled employees have sufficiently recovered to work or when the employees are actually working. These determinations can result in reduced compensation benefits based on employees' preinjury wages and the wages they are earning or are capable of earning in their partially disabled condition. In addition, revised determinations should be prepared when employees later earn substantially more than first envisioned.

FECA PROVIDES FOR REDUCING OR TERMINATING
PARTIALLY DISABLED EMPLOYEES' COMPENSATION

First passed in 1916 and amended several times since, FECA authorizes the payment of benefits for (1) certain permanent physical impairments (schedule awards), (2) medical care, (3) rehabilitation services, (4) surviving dependents, and (5) lost wages. Claims examiners in Labor's Office of Workers' Compensation Programs (OWCP) determine employees' initial eligibility for workers' compensation benefits and their continued entitlement to these benefits. Employees are entitled to compensation benefits for lost wages as long as their disability continues and they cannot perform the job that they held when injured or one with equivalent pay.

The basis for establishing the earning capacity of partially disabled employees has been the subject of several amendments to the act. The original act provided that compensation would be based on the difference between monthly pay and earning capacity. It empowered the administering agency to require that employees periodically report their wages. It provided further:

"That if a partially disabled employee refuses to seek suitable work or refuses or neglects to work after suitable work is offered to, procured by, or secured for him, he shall not be entitled to any compensation."

The act gave the employee some responsibility for seeking a suitable job and also provided for establishing an employee's earning capacity based on actual wages.

Amendments enacted in 1949 expanded the definition of earning capacity to include cases in which a partially disabled employee was not working or wages did not represent an employee's earning capacity. The amendments maintained the emphasis on actual earnings, but added

"That if the employee has no actual earnings, or his actual earnings do not fairly and reasonably represent his wage-earning capacity, . . . [the earning capacity] shall be determined, having due regard to the nature of his injury, the degree of physical impairment, his usual employment, and any other factors or circumstances in the case which may affect his capacity to earn wages in his disabled condition."

Further amendments in 1960 added still more factors that OWCP's claims examiners had to consider in establishing wage earning capacities. During hearings preceding these amendments, employees' union representatives testified that injustices were occurring when benefits were reduced for partially disabled employees who could work but were unable to find jobs. Factors added were age, qualifications for other employment, and the availability of suitable employment. (This language eventually became part of section 8115 of the current act.) Provisions for ending compensation when a beneficiary refused to seek or accept suitable employment (now section 8106) were retained. The effect of these amendments was to detail the conditions that claims examiners had to consider in establishing an employee's earning capacity.

Employees who disagree with claims examiners' determinations of their wage earning capacity may

- submit new evidence and ask for a reconsideration that will be assigned to an examiner who had no prior involvement in the decision;
- request an informal hearing, under oath, before an OWCP representative; or
- appeal to the Employees' Compensation Appeals Board.

The act established the Appeals Board as an entity separate from OWCP to make decisions that are subject to applicable law and the rules and regulations of the Secretary of Labor. The Board's decisions are final. However, employees may again pursue any of the appeal avenues if they have new evidence to present. The Board functions as a judicial body; appeal through a state or federal court system is not permitted.

COMPENSATION ROLLS AND AMOUNTS PAID IN 1982

To help manage injured employees' cases, OWCP maintains (1) a daily roll of beneficiaries consisting of workers who are expected to recover soon and return to the job they held when injured and (2) a long-term roll¹ of employees who are expected to remain disabled for more than 3 months. Claims examiners are responsible for monitoring the daily roll to ensure that compensation ceases when employees return to work. These examiners are also responsible for reviewing the cases on the long-term rolls at least once a year to see whether employees continue to be entitled to benefits or whether action is necessary to reduce or terminate their compensation.

Subject to minimums and maximums, FECA establishes benefit levels at 66-2/3 percent of an employee's salary or lost wage earning capacity for employees with no dependents and 75 percent for employees with one or more dependents. In fiscal year 1982, benefits for recipients under 65 years old on the long-term rolls with no established wage earning capacity averaged \$1,264 per month. Benefits for employees with wage earning capacities averaged \$773. Of the \$905 million paid in benefits (including medical) under the act in fiscal year 1982, about \$518 million went to about 36,000 recipients on the long-term rolls.

OBJECTIVES, SCOPE, AND METHODOLOGY

To evaluate the effectiveness of OWCP's efforts to adjust compensation for partially disabled employees, we reviewed activities in 5 of its 16 district offices--Boston, Cleveland, Dallas, San Francisco, and Seattle--primarily by analyzing case files. As of September 30, 1982, these five offices had 15,162 cases on the long-term roll. OWCP officials agreed that these offices would be generally representative of their operations nationwide. Our review of the case files took place between January and May 1983.

¹Long-term rolls are frequently referred to as the periodic rolls because employees automatically receive benefit payments every 4 weeks.

From these 15,162 cases, we excluded (1) 852 beneficiaries who were not subject to a wage earning capacity determination because they were either receiving schedule awards or participating in a rehabilitation program and (2) 3,373 beneficiaries who were over 65 years old. We excluded the latter group because it seemed unlikely that they would return to work regardless of their degree of disability.²

The remaining 10,937 cases fell into three groups: employees whose (1) earning capacity had not been established, (2) compensation had been reduced because of an earning capacity, and (3) compensation had not been reduced because it had been determined that they had no earning capacity.

From the above groups, we randomly selected cases for review, as shown in table 1. Samples from the first two groups provide results that can be projected with a 95-percent confidence level to the total populations of these cases in the five district offices reviewed. For the last group of employees, we attempted to determine if they were properly classified. However, because we found that a large percentage of these cases were misclassified, our final sample of these cases was too small to make reliable projections. As such, we have no opinion on the appropriateness of the classification of these cases. Appendix II contains additional information on our samples.

Table 1

<u>Earning capacity</u>	<u>Cases in five OWCP district offices</u>	<u>Adjusted universe used for GAO estimates^a</u>	<u>Cases in sample</u>
Not established	6,391	6,391	139
Established	2,825	2,260	99
Established-- no capacity	1,721	998	36

^aBecause some cases could not be located and others were misclassified, we adjusted the sizes of these universes before making our projections.

²Issues related to aged, disabled workers were discussed in our report entitled Federal Employees' Compensation Act: Benefit Adjustments Needed to Encourage Reemployment and Reduce Costs (HRD-81-19, Mar. 9, 1981).

We reviewed samples of:

- Employees who had not had wage earning capacities established to identify whether medical evidence indicated that the worker was partially disabled and therefore potentially subject to the development of a wage earning capacity.
- Employees with established wage earning capacities to determine (1) how long OWCP took to establish these capacities and (2) whether evidence of actual earnings indicated that these capacities should have been adjusted.

We recognize that medical evidence of partial disability is only one of the factors that OWCP must consider before it can establish an employee's wage earning capacity. However, it is the key factor which should trigger the process of establishing an employee's earning capacity, thereby resulting in a reduction in compensation benefits. The medical evidence of partial disability that we reviewed consisted of physicians' statements that the claimant could return to work or that the claimant was not totally disabled. In some cases, the files contained a work restriction report that described the employee's physical limitations and the extent to which an employee was capable of working.

We also reviewed FECA and the legislative background of provisions concerning partial disability, Labor's regulations, OWCP's policies and procedures, and decisions of the Employees' Compensation Appeals Board. Moreover, we reviewed reports previously issued by us, the Inspector General, and the OWCP Task Force that addressed problems related to the establishment of wage earning capacity determinations.³ We interviewed officials at OWCP headquarters and district offices, including district medical directors and claims examiners. Our review was performed in accordance with generally accepted government auditing standards.

³Reports issued over the years that have discussed wage earning capacity problems include (1) GAO report to the Congress entitled Need for Prompt Adjustment in Compensation Payments to Injured Federal Employees From Total to Partial Disability Rates (B-157593, Jan. 12, 1967); (2) Report of the OWCP Task Force: Program Description and Recommendations (Dec. 30, 1976); (3) Inspector General report on Audit of Federal Employees' Compensation Program (11-7-140-L-005, Oct. 10, 1977); (4) Inspector General report on Review of Federal Employees' Compensation Act-Periodic Roll Case Management (11-9-131-L-002, June 6, 1979); and (5) Inspector General report on Review of Federal Employees' Compensation Act-Periodic Roll Case Management (11-0-147-L-009, Dec. 12, 1980).

We discussed our sample results with officials in each of the district offices after our case file review. At four district offices, the officials generally agreed with our results. However, San Francisco district office officials disagreed that benefits could be reduced for each employee in the sample where there was evidence of partial disability. They noted that evidence of partial disability by itself will not necessarily result in the establishment of a wage earning capacity and that other factors must also be considered before an earning capacity can be established. We agreed with these officials and have modified our report to more clearly recognize that these other factors must be considered before an employee's benefits can be reduced.

OWCP HAS NOT ESTABLISHED EARNING
CAPACITIES FOR MANY PARTIALLY
DISABLED EMPLOYEES

According to OWCP guidance, injured employees are considered partially disabled when medical evidence shows they are no longer totally disabled for work. However, evidence of partial disability does not immediately result in reduced compensation because OWCP's claims examiners must also assess various nonmedical factors to establish that a beneficiary has an earning capacity. For the reasons discussed on page 7, OWCP had not established the earning capacity of many employees on the long-term rolls although the medical evidence indicated that they were partially disabled.

Based on the medical evidence in the case files we reviewed, we estimated that 2,070 beneficiaries in the five district offices were considered partially disabled after their claims for temporary total disability benefits had been approved. These beneficiaries represent about a third of those under 65 years old who were receiving full compensation because OWCP had not established their wage earning capacity.

If these five districts are representative, we would anticipate that about 4,400 of the 13,700 employees (under age 65) on OWCP's long-term rolls without established wage earning capacities were partially disabled and, as such, should have had a wage earning capacity established.

We estimated that OWCP may have been able to reduce compensation cost in the five districts we reviewed by as much as \$12.5 million during fiscal year 1982 if it had been able to establish employees' wage earning capacities at the time these employees were no longer totally disabled from their work-related injury. This estimate was based on an average reduction in compensation benefits of 42 percent for employees whose wage

earning capacities were initially established in fiscal year 1982. If, as OWCP officials believe, the five district offices we reviewed are representative of activities nationwide, OWCP may have been able to reduce fiscal year 1982 compensation costs by as much as \$26 million. (Additional information on our sample estimates and compensation cost reductions is contained in app. II.)

Although the medical evidence indicated that these employees were partially disabled, the factors that OWCP has to consider in establishing a wage earning capacity would likely preclude the establishment of a wage earning capacity for some partially disabled employees. In establishing earning capacities OWCP must consider, for example, not only medical, but economic, vocational, and other factors. Thus, a partially disabled worker may receive full compensation benefits when a careful assessment of all pertinent data indicates that he or she does not have an earning capacity.

A reduction in benefits for an employee who is no longer totally disabled should not be an unexpected event; such individuals should anticipate that their compensation benefits will be reduced. When OWCP assigns employees to the long-term compensation rolls, a letter to the beneficiary states:

"If . . . your condition improves, and you are able to perform some type of work, it will then be necessary to redetermine your amount of compensation.

"Your attending physician will notify us when you are no longer totally disabled. . . ."

Similarly, when the physician reports improvement, OWCP notifies the beneficiary:

"The medical evidence shows that you are no longer totally disabled for work. Therefore, we must determine your wage-earning capacity in your partially disabled condition."

WHY WAGE EARNING CAPACITIES WERE NOT ESTABLISHED

Various factors have contributed either directly or indirectly to the large number of cases without wage earning capacity determinations. First, according to officials in OWCP's district offices, claims examiners have many responsibilities, and earning capacity determinations do not receive a high priority. Second, the task is complex and time consuming and requires examiners to collect information from many sources,

some of whom are not very cooperative. Third, frequent appeals of earning capacity determinations create more work for examiners. Fourth, the task is one that an examiner can defer with little likelihood of external criticism. Beneficiaries are not likely to complain to Labor or their congressman that OWCP should have reduced their compensation using the wage earning capacity process. In most other aspects of their work, examiners' failure to act results in complaints.

Officials believe that claims examiners have more work than they can handle-- a problem of priorities

OWCP officials in the district offices believed that claims examiners were overburdened with cases and responsibilities, of which wage earning capacity determinations form only a small part. The average caseload in the five districts in fiscal year 1982 was over 1,000 per examiner. In addition to making wage earning capacity determinations, examiners

- review, investigate, and adjudicate employees' applications for compensation for injury or death;
- respond to congressional inquiries concerning specific cases;
- work on cases remanded by OWCP's hearing representatives and by the Employees' Compensation Appeals Board; and
- review new evidence in reconsidering previous decisions.

For each of the above tasks, someone--generally an injured employee--will complain or at least inquire if the process is delayed. As a rule, the claims examiners are expected to place a high priority on these tasks. Similar motivation does not exist for wage earning capacity determinations.

Low priority for establishing wage earning capacities means long delays

According to OWCP officials and examiners in the district offices we visited, low priority has been given to the time-consuming process of establishing wage earning capacities. Officials and examiners at each district office were concerned with adjudicating applications for benefits.

The low priority accorded wage earning capacity determinations was apparent from long delays in beginning them. Among the cases in our sample that were acted on, OWCP took an average

of 8 months from the time it received medical evidence indicating partial disability to the time of its first action to establish an earning capacity. These delays accounted for half of the 16 months it took to establish an earning capacity. Earning capacities completed in fiscal year 1982 took about the same amount of time as those established in previous years. While the average time is influenced by some cases that took an exceptionally long time, about 50 percent of the established earning capacities took over 1 year to complete.

The low priority accorded wage earning capacity determinations was even more evident in the almost 6,400 cases where no earning capacity had been established. For the estimated 2,070 cases with medical evidence of partial disability, this evidence averaged over 4 years old. We also estimated that in 18 percent of these cases this evidence was over 8 years old. Examples of cases in which earning capacities were not established follow.

--A Navy munitions handler developed a skin allergy apparently as a result of handling chemicals at work. In 1974, when this employee was 47 years old, OWCP placed her on its long-term rolls, even though the most recent medical evidence at that time stated "I think this does not warrant retiring on permanent disability." Although her condition prevented her from continuing her job as a munitions handler, several doctors agreed that this condition would not stop her from doing other kinds of work. For example, one dermatologist stated her condition should not keep her from employment provided she refrained from contact with substances that might irritate her skin. Moreover in April 1982, the district medical director wrote "There is insufficient medical evidence to establish continuing (work related) total disability since the June 4, 1974, medical report . . ." However, as of September 30, 1982, OWCP had taken no action to assess the worker's earning capacity. She was receiving about \$1,100 a month and had received \$83,522 in compensation for total disability since 1974.

--An employee of the National Aeronautics and Space Administration with a strained back was placed on the long-term rolls in 1977 at the age of 51. That same year, medical evidence that included a work restriction report indicated he could work 8 hours a day. However, OWCP took no action to establish his earning capacity. As of September 30, 1982, he was receiving about \$1,800 a month and had received \$95,678 in compensation since 1977.

Examiners must perform
lengthy, sequential process

Establishing an employee's wage earning capacity is often a lengthy process. For the 99 cases in our sample with earnings capacities, OWCP took from less than 1 month to over 80 months (and an average of 16 months) to make these determinations from the time it received medical evidence of partial disability. In making these determinations, claims examiners must generally gather extensive information from various sources, including medical evidence from physicians, work experience and wage information from employers or injured employees, data on job availability and salary information from state employment security offices, and sometimes opinions from an OWCP district medical director or rehabilitation specialist.

Even in cases where the injured employee had already returned to work--20 of the 99 cases--establishing wage earning capacities took an average of 14 months. For these cases, the range was from less than 2 weeks to 71 months. In most of these cases, OWCP made adjustments in benefits retroactive to the time the beneficiary began working.

The specific steps that claims examiners follow in preparing wage earning capacities are discussed in appendix III. These steps are generally followed sequentially, and a delay in one step often delays the whole process.

Assessments often appealed

The examiner's work did not necessarily end with the establishment of an employee's wage earning capacity. One-fourth of the established earning capacity cases in the five districts we reviewed had gone through appeal. When a case is appealed, claims examiners must review the file to make sure it contains all the required documentation. In some cases, they must confirm this information or obtain more evidence. If the employee submits new evidence and asks for a reconsideration, a different examiner must review the entire case again in light of the new evidence.

NEED TO READJUST COMPENSATION WHEN
EARNINGS EXCEED ESTABLISHED CAPACITY

Once OWCP established an employee's earning capacity, it often did not modify it when the beneficiary began earning considerably more than his or her "capacity." About 15 percent of our sample of recipients with wage earning capacities were earning from 12 to 203 percent more than their established capacity. Had OWCP redetermined their capacities to reflect actual

earnings, we estimated that about \$1.5 million in compensation benefits could have been saved in the district offices we reviewed.

Some beneficiaries earned more than the amount established as their wage earning capacity. These increased earnings may indicate that conditions exist for further adjusting a beneficiary's compensation. When comparing the established capacity with current earnings to adjust employees' compensation ratings, OWCP must take into account such factors as (1) the present earnings for the job held at time of injury, (2) the employees' physical condition and work activities, and (3) cost of living increases since the time of the injury.

In reviewing 99 cases in which earning capacities had been determined, we found 15 beneficiaries who were earning from 12 to 203 percent (an average of 76 percent) above their established capacity. Three of these 15 employees were earning more than their preinjury earnings. In such cases, it would appear that their compensation should have been terminated. If OWCP had adjusted compensation in these cases, an average of \$4,454 per case might have been saved in fiscal year 1982. Moreover, if OWCP had made adjustments to the estimated 340 similar cases in the five district offices we visited, compensation costs of over \$1.5 million might have been saved. Furthermore, if these offices are representative, savings nationwide may have totaled over \$4.4 million. An example of an employee earning more than shown in the initial wage earning capacity follows.

--A mail carrier who injured his back was paid compensation for total disability from May 1973 until October 1976, when compensation was reduced from \$799 to \$535 a month based on a wage earning capacity determination. OWCP estimated that, based on the employee's part-time employment in real estate sales since 1954, he could earn at least \$92 a week (the minimum wage) as a general salesman. In February 1978, the employee reported to OWCP that he earned about \$14,000, or \$269 a week, in 1977. However, OWCP did not readjust this employee's earning capacity. Three years later, the former mail carrier reported earning at least \$20,000 a year, or \$385 a week. In April 1981, OWCP received verification from the Social Security Administration that he had reported self-employed earnings from his real estate business ranging from \$14,100 in 1975 to \$22,900, or \$440 a week, in 1979. In December 1981 he reported to OWCP that net earned income for 1981 would be about \$20,000 and that he now had several real estate agents working for him. In December 1981, a supervisory claims examiner expressed the intention of terminating this employee's benefits

because he was earning twice his primary compensation. However, as of September 30, 1982, OWCP had not adjusted compensation and was paying the employee \$902 a month. Since 1976, when his earning capacity was based on \$92 a week, the employee has earned an average of \$365 a week, or \$19,000 a year. During this period, he has received from \$8,000 to \$11,000 a year in compensation.

We recognize that there are unique problems in establishing earning capacities (particularly in the first year or so) for employees whose actual earnings are based on commissions. However, it would appear that OWCP should have made subsequent adjustments in this case.

According to officials in several of the districts reviewed, examiners were not adjusting compensation because they believed the Appeals Board would not uphold subsequent adjustments to employees' earning capacities. In this regard, one of the following three conditions needs to occur before the Board will uphold an adjustment in earning capacity: (1) the medical condition has to improve, (2) the individual has to be retrained or otherwise vocationally rehabilitated, or (3) the original earning capacity determination has to be deemed erroneous. District officials and claims examiners may have been misinterpreting the Appeals Board decisions, as OWCP headquarters officials told us that when an individual is earning more than was reflected in the original earning capacity, compensation can be adjusted on the basis of either the second or third of these alternatives. In many cases, wage earning capacities were not being adjusted, and there was confusion within OWCP concerning what conditions justify reducing a beneficiary's compensation.

REDUCED COMPENSATION COSTS SHOULD
RESULT FROM ACTIONS TO IDENTIFY
CLAIMANTS WHOSE BENEFITS NEED ADJUSTING

Changes in the way OWCP plans to manage cases may ease or obviate the process of establishing wage earning capacities in the future. In addition, after we discussed the results of our review with Employment Standards Administration officials, OWCP's Division of Federal Employees' Compensation in December 1983 drafted instructions for its claims examiners, medical, and vocational rehabilitation staff that will result in a special effort to identify claimants on the long-term rolls whose compensation benefits need adjusting.

New case management procedures should
result in better monitoring of cases

In fiscal year 1984, OWCP implemented a new case management system that provides for (1) better monitoring of compensation

cases, (2) greater interaction with disabled employees to get them back to work, and (3) where appropriate, either terminating employees' compensation benefits or reducing their compensation through the establishment of wage earning capacities.

According to FECA bulletins published in November 1983, this new system was developed to formalize the procedures for use by all claims examiners. Anticipated benefits include (1) providing clear guidelines for developing medical evidence, (2) obtaining more complete and accurate medical evidence, (3) returning more employees to work, (4) providing streamlined procedures for monitoring cases, (5) increasing job placements over traditional loss of wage earning determinations, and (6) reducing the compensation costs of federal agencies.

Elements of this new system include

- obtaining second medical opinions that contain complete evaluations of the injured employee, including estimates of the dates of partial or full recovery and information on work restrictions or limitations;
- establishing call-up dates that require claims examiners to review cases and take appropriate actions at selected intervention points (e.g., the estimated date of partial or full medical recovery) that continue until the employee returns to work; and
- working with employing agencies to provide regular or "light duty" jobs to partially disabled employees or, failing that, referring the employee to an OWCP rehabilitation specialist for eventual job placement, after which compensation can be reduced or terminated.

This new system, if properly implemented, should improve the basis for either terminating employees' compensation benefits or initiating and completing wage earning determinations and then reducing these benefits. OWCP should also be able to make more determinations on the basis of actual wages earned. Because this system is designed to overcome problems related to inadequate case management in the period shortly after the injury, these new case procedures can probably be applied most effectively in cases where employees were recently injured or where the injured employee had been on the long-term roll for only a short time. In our opinion, these employees--many of whom have probably been out of work for years--may require more intensive rehabilitation and job placement services than recently injured employees.

Plans to review periodic roll
cases and adjust individuals'
compensation benefits

In November 1983, we discussed our findings with Labor officials. Because there are about 13,700 cases on the long-term rolls for which wage earning capacities have not been established, we suggested that Labor consider using a task force to establish, where appropriate, earning capacity determinations for partially disabled employees. OWCP's Division of Federal Employees' Compensation later drafted a FECA bulletin (which was issued on Feb. 27, 1984) to address this problem. Although the division's plan does not call for establishing a task force, the division's approach for handling the backlog of cases for which wage earning determinations may be needed appears reasonable and, if effectively implemented, should result in adjustments in partially disabled employees' compensation benefits.

OWCP's plan calls for closer scrutiny of periodic roll cases in which the claimant is less than 60 years old and the potential for reduction or termination of benefits is likely to be present. Cases without established wage earning capacities or with determinations of no earning capacity will be identified by the division and should be reviewed by OWCP staff before the end of calendar year 1984. These reviews are to be made within the new case management system, and the division will monitor the progress and results of this effort. The plan also states that district office officials should report on any failure to conduct these reviews at a rate appropriate to meet the deadline.

The bulletin also clarifies conditions that need to be satisfied for making further adjustments to an employee's earning capacity determination. The bulletin states that, in most cases, minor adjustments in actual earnings are not a basis for revising an existing determination. However, examiners should be alert to evidence that claimants have rehabilitated themselves and that if claimants' reports to OWCP show significant increases in earnings, the examiners should make inquiries to determine if further adjustments in compensation are warranted. These instructions clarify for OWCP district office staff the conditions that need to be met to further modify an employee's earning capacity.

The effort described in the FECA bulletin represents a major step to eventually better ensure that benefit rates reflect an individual's compensable disability. However, the bulletin points out that if many cases need to be referred to vocational rehabilitation specialists, other referrals resulting from the implementation of the new case management system will take priority. Should the situation arise where the number of

long-term roll cases needing action increases beyond the specialists' capabilities, a task force similar to the one used to clear a backlog of hearing loss cases that developed in the 1970s may be needed.

In this regard, in 1976, Labor responded to a growing backlog of hearing loss cases by establishing a Hearing Loss Task Force to process these claims. The task force was established as a temporary unit initially staffed by employees appointed for periods ranging from 3 months to 2 years. OWCP later contracted with "outside" specialists to help reduce the backlog of claims needing adjudication.

CONCLUSIONS

OWCP should establish wage earning capacities for the estimated thousands of beneficiaries who, according to the medical evidence, were partially disabled, but who are currently receiving full compensation benefits. Many factors have contributed to claims examiners not undertaking the process of establishing earning capacities, which resulted in a large backlog of cases for which earning capacities are unknown.

OWCP's new case management system appears to provide the needed emphasis for terminating or reducing compensation to employees who have fully or partially recovered from their work-related disabilities. In addition, OWCP's plan to address the backlog of cases on the long-term rolls for which adjustments in beneficiaries' compensation rates may be needed is a major step in the right direction. However, because problems related to wage earning capacities are longstanding ones that have previously been discussed in reports by us, the Inspector General, and others, management's attention will be necessary to ensure that claims examiners and other OWCP staff effectively implement these initiatives.

RECOMMENDATIONS TO THE SECRETARY OF LABOR

We recommend that the Secretary direct OWCP to ensure that it implements the plans for reviewing long-term roll cases for purposes of terminating or adjusting, where appropriate, partially disabled employees' compensation benefits. If this effort is not successful, we recommend that the Secretary consider establishing a task force to (1) identify from the backlog of periodic roll cases beneficiaries who are no longer totally disabled; (2) collect the information needed to establish their wage earning capacities; and (3) where appropriate, adjust their compensation benefits.

INFORMATION ON OUR SAMPLES WITH
ESTIMATES AND RELATED SAMPLING ERRORS

For our review of wage earning capacity determinations, we randomly selected cases from five OWCP district offices--Boston, Cleveland, Dallas, San Francisco, and Seattle. We reviewed case files of beneficiaries who were less than 65 years of age as of September 30, 1982, and who had received a check for compensation benefits on October 6, 1982. Estimates and sampling errors shown below are stated at the 95-percent confidence level. This means that the chances are 95 out of 100 that the difference between the estimates developed from the sample and the results of reviewing all the claims in a particular category would be less than the sampling errors shown.

<u>Type of estimate</u>	<u>Estimate</u>	<u>Sampling error</u> (+/-)
Number of beneficiaries with undetermined earning capacities with medical evidence of partial disability (p. 6)	2,070	485
Percent of cases	32.4	7.6
Amount of compensation which might have been saved if OWCP had established earning capacities (p. 6)	\$12,500,000	\$3,200,000
Average age of medical evidence of partial disability in months for those cases for which earning capacities were not determined (p. 9)	49.7	12.1
Average number of months to start earning capacity process (p. 8)	8	2.3
Average number of months to complete earning capacity process once started (p. 9)	8	2.2
Average number of months to complete earning capacity process from the time medical evidence of partial disability was received (p. 10)	16	3

APPENDIX II

APPENDIX II

<u>Type of estimate</u>	<u>Estimate</u>	<u>Sampling error</u> (+/-)
Number of employees with earning capacities who were earning at least 12 percent more than their established capacity	340	80
Percent of employees (p. 11)	15	3.5
Amount of compensation that might have been saved if earning capacities were readjusted to reflect actual earnings (p. 11)	\$1,510,000	\$695,000

In estimating the compensation costs that might have been saved if OWCP had been able to establish wage earning capacities for partially disabled employees, we computed the savings in the following manner.

1. We determined the average reduction in compensation payments to individuals for whom OWCP established an earning capacity for the first time in fiscal year 1982 (the average reduction equaled 42 percent).
2. For the 45 employees in our sample whose earning capacities were not established and whose case file contained medical evidence of partial disability, we reduced their compensation benefits by 42 percent.
3. We summed the reductions calculated in step 2 and divided this total by 139 (the number of cases in our sample where earning capacities had not been established) and computed an average reduction of over \$1,958 per case.
4. Finally, we multiplied the reduction calculated in step 3 by the total number of cases (6,391) for which Labor had not established earning capacities to compute the compensation costs that might have been saved.

STEPS INVOLVED IN ESTABLISHINGA WAGE EARNING CAPACITY

Before OWCP can adjust an employee's compensation benefits by establishing a wage earning capacity, claims examiners generally complete the following process in sequence.

OBTAIN MEDICAL EVIDENCE
AND NOTIFY CLAIMANT OF
FORTHCOMING ADJUSTMENT

Claims examiners are responsible for monitoring the current medical condition of injured employees receiving temporary total disability benefits. Upon receiving medical evidence indicating that the employee is partially disabled, the examiner sends a form letter to the beneficiary. This letter contains a notification to the employee that the total disability has ceased and compensation must be adjusted for earning capacity. This letter also requires beneficiaries to answer several questions, such as what type of work they believe they can do in their present physical condition.

OBTAIN INFORMATION ON EMPLOYEE'S
WORK RESTRICTIONS

After receiving medical evidence indicating that the injured employee has the capacity for some work, the examiner requests the employee's physician to complete a form that shows (1) the physical restrictions which the impairment imposes on the employee and (2) the number of hours a day the employee can work. In some cases, the employee may be asked to report to an independent specialist or consulting physician so that a work restriction report can be completed. These forms and medical reports contain information on the employee's limitations to lift, bend, sit, stand, walk, stoop, kneel, twist, and climb. On occasion, the district medical director may be asked to review the medical evidence and complete the work restriction report.

IDENTIFY EMPLOYEE'S WORK EXPERIENCE,
EDUCATION, AND TRAINING

If information on the employee's education, work experience, and training is not already on record, the examiner must request this information from the employee and from the employer. In some cases, a copy of the employee's application for employment (Standard Form 171) will provide some of this

information, but usually the examiner will need to obtain additional information on the employee's training and work experience.

IDENTIFY A JOB THE
EMPLOYEE CAN HOLD

When the injured employee remains unemployed, the examiner is responsible for selecting from the 20,000 jobs listed in Labor's Dictionary of Occupational Titles a job that the employee can perform. This publication describes the qualifications and lifting requirements for each job listed.

According to district office officials, the choice of a job to fit the employee's physical capabilities is difficult and is often appealed. As a result, examiners usually select from the dictionary only a few sedentary jobs that pay minimum wage that they believe most partially disabled employees could hold. Common jobs selected included telephone solicitor, general office clerk, watchman, and salesperson.

REQUEST A PHYSICIAN TO
REVIEW THE JOB SELECTED

After the examiner selects a job that he or she believes an employee can hold, a physician must review the job's physical requirements and state whether the employee can perform it and for how many hours per week. These reviews are made by the employee's physician, a consulting physician, or an OWCP district office medical director.

REQUEST FOR INFORMATION ON THE
AVAILABILITY OF THE JOB SELECTED

The examiner must determine if the job is reasonably available and how much it pays. Usually the examiner can make this determination by telephoning the State Employment Security Office near the employee's residence and finding out if the job is offered, how far the employee would have to commute, and what the range of pay is. If the work restriction report indicated that the employee can work only part time, the examiner must also ask if a part-time job is reasonably available within the commuting area. According to some OWCP district office officials, it often takes several telephone calls to find someone who is willing and able to provide the needed information.

OBTAIN UPDATED SALARY INFORMATION
FROM EMPLOYING AGENCY

Before adjusting the employee's compensation benefits, the examiner must request information from the employing agency on the current salary being paid for the position that the employee held when injured. If the work limitations indicate that the employee may be able to perform that job, the examiner may request a copy of the job description.

UPDATE INFORMATION

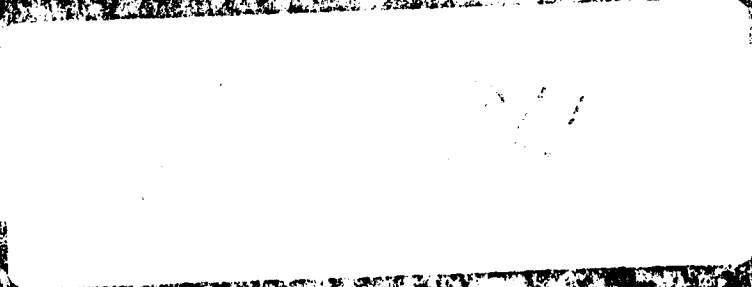
After obtaining all the above information, the examiner may find that some of it has become outdated. For example, OWCP guidelines require that a new work restriction report be requested if the one on file is more than a year old.

ADJUST THE COMPENSATION RATE
AND NOTIFY THE EMPLOYEE

After the above information is collected and, if necessary, updated, the examiner computes the employee's new compensation rate. The wage earning capacity determination is then reviewed and certified by a supervisory claims examiner or other OWCP district office official. Finally, the examiner notifies the employee of the earning capacity decision and the new compensation rate 2 weeks before it takes effect.

END

FILMED



DTIC